

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____	)	
IN RE PHARMACEUTICAL INDUSTRY	)	
AVERAGE WHOLESALE PRICE	)	MASTER FILE NO. 01-cv-12257
LITIGATION	)	
_____	)	MDL No. 1456
	)	
THIS DOCUMENT RELATES TO:	)	JUDGE PATTI B. SARIS
	)	
BRISTOL MYERS SQUIBB SETTLEMENT	)	
_____	)	

**ORDER FOR FINAL CONSIDERATION OF BMS SETTLEMENT**  
**NOVEMBER 29, 2010**

Saris, U.S.D.J.

This Court has heard from counsel during several hearings on the status of the Class 1, 2 and 3 aspects of the Settlement with Bristol Myers Squibb ("BMS"). This Court also received, on November 19, 2010, the sworn testimony of Cindy Weigel, an employee of Buccaneer, a Vangent Company ("Buccaneer") the vendor working with CMS to produce data to effectuate notice to Class 1. A memorandum of understanding concerning a Class 1 settlement was first proposed in June of 2007. Class counsel explained at the November meeting why, in their view, the remainder of the settlement took so long to reach. I order the participants to proceed with dispatch with the BMS settlement which shall be the highest priority because the consumer classes consist of elderly and sick people. This Court asserts jurisdiction over the

parties, the parties' counsel, the data vendor and the Claims Administrator. Accordingly, this Court ORDERS the following:

1. **Data Production.** This Court hereby orders that the Centers for Medicare and Medicaid Services ("CMS") and its vendors, the Research Data Assistance Center ("RESDAC") and Buccaneer, shall, no later than December 15, 2010, produce to the Claims Administrator electronic data sufficient to identify all transaction information for individuals for whom CMS reimbursed any of the specific drugs involved in the BMS Settlements, as identified in a separate list of J Codes or HCPCS. These HCPCS should be run against the Outpatient SAF, Carrier SAF and DME SAF files for all beneficiaries that had any one of the submitted HCPCS, outputting only the claims with the submitted HCPCS. These should also be run against the Vital Status file with names and addresses (alive and dead). The exact data to be provided is further identified in the letter from Buccaneer to Class Counsel dated November 1, 2010.

2. **Class Counsel To Assist.** This Court hereby orders that Class Counsel shall take all reasonable steps necessary to ensure that the necessary data is transferred to the Claims Administrator by December 15, 2010.

3. If the data mentioned above is not produced by December 15, 2010, the Court will hold a hearing to determine if CMS, RESDAC, Buccaneer and/or Class Counsel are in contempt of this Order.

**4. Further Schedule.** This Court hereby further orders Plaintiffs and Class Counsel, the Claims Administrator, and BMS and its counsel to exercise all reasonable efforts to complete the BMS Class 1 Settlement approval process on the following schedule:

December 31, 2010	Direct Mail Notice sent to Potential BMS Class 1 Members
January 31, 2011	Deadline for Class 1 Members to return Initial Notice Cards
February 14, 2011	Class Plaintiffs file Motion for Attorney Fees and Expenses
February 21, 2011	Class Counsel Files Recommendations on Use of Any Excess Settlement Funds (the Court may thereafter issue, prior to the final approval hearing date, an order to show cause why a particular use of excess funds is not appropriate)
February 28, 2011	Deadline for Objections, Exclusions and Filing of Claims
March 14, 2011	Class Plaintiffs File material In Support of Final Approval of Class 1 Settlement

**5. Final Approval Hearing.** The Final Approval Hearing for the BMS Class 1 Settlement will be held on March 28, 2011 at 2:00 P.M. in Courtroom 22.

**6. Status Reports.** Class Counsel shall file with the Court monthly status reports detailing the progress of the BMS Settlement. The first such report shall be filed on December 17, 2010. Subsequent reports shall be filed on the first day of each month.

7. **Service.** Class Counsel shall serve copies of this Order on the Claims Administrator, CMS, RESDAC and Buccaneer. Class Counsel shall thereafter promptly file with the Court a notice of completion of service.

/s/ PATTI B. SARIS \_\_\_\_\_  
Patti B. Saris  
United States District Judge